

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF

RHODE ISLAND STATE LABOR
RELATIONS BOARD

CASE NO: ULP-5022

-AND-

STATE OF RHODE ISLAND
DEPARTMENT OF CORRECTIONS

DECISION AND ORDER

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter Board) on an Unfair Labor Practice Complaint (hereinafter Complaint) issued by the Board against the State of Rhode Island, Department of Corrections (hereinafter Employer) based upon an Unfair Labor Practice Charge (hereinafter Charge) dated June 20, 1995 and filed on June 22, 1995 by the Rhode Island Brotherhood of Correctional Officers (hereinafter Union)

The Charge alleged as follows:

The employer has violated Title 28, Chapter 7, Section 13 (10) and (11) by failing to comply with an arbitrator's award in American Arbitration Assoc. case number 1139 2030 89 which required adoption and implementation of a formal in-service training program for correctional officers.

Following the filing of the Charge, an informal conference was held on July 18, 1995 between representatives of the Union and Employer and an Agent of the Board. When the informal conference failed to resolve the Charge, the Board issued the instant Complaint on May 13, 1997. The Employer filed its Answer on May 19, 1997. A formal hearing on the matter was held on September 25, 1997. Both parties were represented by Legal Counsel and were provided the opportunity to examine and cross examine witnesses and present evidence. Upon conclusion of the hearing, both the Union and the Employer submitted briefs. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and evidence presented and the Post Hearing Briefs.

SUMMARY OF FACTS AND TESTIMONY

The facts in this case are relatively straight forward and undisputed. Sometime during the late 1980's, the Union filed a grievance¹ against the Employer, alleging that the Employer was violating the parties' collective bargaining agreement by failing to provide in-service training² to correctional officers. On April 19, 1990, Arbitrator Susan R. Brown issued her decision and award which stated:

The State violated Article 31.1 with respect to training Correctional Officers after their appointment.

The Training Committee shall meet and submit a comprehensive training program, as per Article 31.1, within 30 days of this award. The Department shall, within 60 days of this award, adopt a formal in-service training program for Correctional Officers. The training program so adopted shall begin no later than 90 days from the date of this award.

Subsequently, the Training Committee did meet and designed a forty (40) hour in-service training program which was adopted by the Department of Corrections. (TR p. 12-13) Thereafter, the parties agreed during negotiations that implementation of the award could be delayed until June 30, 1993. The Union claims that implementation of the award after June 30, 1993 was sporadic, at best. Kenneth W. Rivard, the Union's grievance Chair and delegate of the training committee testified that after June 30, 1993, the Department did begin having classes, for day-shift officers. (TR. p. 21) He further testified that in 1994, the Department provided in-service training for approximately 70 officers³ (TR. p. 25) Training was provided to 150 officers in 1995 and to 120 officers in 1996. (TR. p. 25) In 1997, no training has taken place until the week of the formal hearing which was held on September 25, 1997. (TR. p. 27 and 31) He also testified that there had been periods in which training lapsed completely. (TR. p. 27-28)

The Union also presented the testimony of George H. Truman, Jr. the Associate Director for Human Resources. ⁴ Mr. Truman testified that the number (of officers receiving training on an annual basis) provided by Mr. Rivard was accurate. (TR. p. 35-36) Mr. Truman also testified that none of the correctional officers (other than superiors)

¹ American Arbitration Association case no 1139-2030-89

² In service training refers to training that takes place after an officer has been hired. Pre-service training refers to training of prospective correctional officers at the training academy.

³ Mr. Rivard testified that he believed there were between 600 and 700 correctional officers in 1994 and that number had grown to over 900 in 1997.

⁴ Mr. Truman was called as an adverse witness.

who work on the 11:00 pm - 7:00am shift received any in-service training. He also testified that approximately one quarter of the officers on the 3:00pm -11:00pm shift have received some form of in-service training. On cross examination, Mr. Truman conceded the Department has not requested additional funds in its budget for the implementation of the award. (TR. p. 46) He also stated that he is not deeply involved with the budget process, so he didn't know whether the budget process took arbitration awards into consideration.

POSITION OF THE PARTIES

The Union's position is that the State's admission of its failure to provide training is essentially a prima facie case of an unfair labor practice.

The State, while acknowledging that 40 hours of training per officer, per year has not been provided, asserts several defenses for this failure. The Employer argues that it has made a "good faith effort" to comply with the terms of the award, but that it has been unable to do so completely because of lack of funding. The Employer also argues that "intervening case law involving public policy limitations on the enforceability of contract provisions warrants dismissal" [of the unfair labor practice complaint]. (Employer's brief p. 1) The Employer also argues that the arbitration award did not specify the required training with clarity, so that the matter ought to be resolved by further arbitration. (Employer's brief p. 5-6) Finally, the Employer argues that this Board is without jurisdiction to hear this case because the specific method for resolving disputes under the CBA is through grievance and arbitration.

DISCUSSION

The State Labor Relations Act provides that it shall be an unfair labor practice: "To fail to implement an arbitrator's award unless there is a stay of its implementation by a court of competent jurisdiction or upon the removal of any such stay." R.I.G.L. 28-7-13

In this case, there was no stay of the award ordered by a court of competent jurisdiction. However, the parties agreed, as a matter of collective bargaining that the Union would forego any further litigation or arbitration with respect to the award until June 30, 1993. (See Union exhibit #1). Therefore, the Board will only consider the

timeframe of December 22, 1994 through June 22, 1995⁵ in determining whether an unfair labor practice has occurred.

Mr. Rivard's undisputed testimony established that the Training Committee met and established a benchmark of 40 hours of training per officer per year and that the Department adopted the committee's recommendation.⁶ Furthermore the parties stipulated that the Union and the Department cooperated in putting together a 40 hour in service training program. Although the parties have differing opinion on exactly how much training took place, it is clear that they do agree that the actual implementation of the award did not encompass 40 hours of training per year, per correctional officer. The Employer describes this failure to provide training a "technical violation" of the award, not an intentional violation. (See TR. p. 8)

In this case, the Union has alleged that the Employer failed to comply with an arbitration award. The Employer claims that the award did not specify the nature and extent of the training program to be developed and that the Union now asks the Board to do what the arbitrator herself refused to do. (See Employer's brief, p. 6) While it is true that the arbitration award did not provide specifics for training, it is equally true that the parties met and fashioned the required training program together. As mentioned previously, the parties stipulated that this cooperatively designed training program required 40 hours of training, per employee, per year. It is this program that must be implemented.

The Employer also argues that "the arbitration award required the Training Committee to 'adopt' and 'begin' a formal in service training program and nothing more" and that the evidence established that these requirements were met. The Employer further argues that the training committee met, conferred, adopted and initiated a phased training plan which comported with the parameters outlined in the contract and at that point the Arbitrator's directive was met. If this Board were to accept such a position, we would have to believe that the Employer only had to have one day of training (by beginning it) and then it could stop, having met its burden. Such a premise defies reason and is an

⁵ Date of filing of this charge of unfair labor practice.

⁶ The evidence did not reveal what type of training was required, nor any other details of the Training program such as scheduling, compensation, etc.

affront to the entire notion of harmonious labor /management relationships. Such an argument also ignores the Arbitrator's directive to the Department to implement the adopted training program

While cognizant of the Employer's budgetary woes, this Board is not empowered to grant the Employer relief from complying with the terms of an arbitration award. The Labor Relations Act does not provide relief from implementing arbitration awards to a party who "exercises good faith" in implementing it. Such relief, in whatever form, must be sought, if at all, in other forums.

Therefore, the failure to comply with this term of the agreement which was mandated by the arbitration award is a failure to implement the terms of the award, in violation of R.I.G.L. 28-7-13 (11) and this Board so finds.

FINDINGS OF FACT

- 1 The Employer is an "employer" within the meaning of the Rhode Island State Labor Relations Act.
- 2) The Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection and as such is a labor organization within the meaning of the Rhode Island Labor Relations Act.
- 3) On April 19, 1990, Arbitrator Susan R. Brown rendered a decision and award which required the Training Committee to meet and design a formal, in-service training program for correctional officers and required the Employer to adopt and begin the program for correctional officers in its employ. Said implementation was to take place no later than 90 days from the date of the award, to wit, April 19, 1990.
- 4) The Training Committee did meet and create a formal, in-service training program which was adopted by the Employer.
- 5) The training program adopted required 40 hours of in-service training, per correctional officer, per year.
- 6) The Union and the Employer agreed, pursuant to collective bargaining, that the Union would forego any further litigation or arbitration with respect to the award until June 30, 1993

- 7) After June 30, 1993, the Employer began some in-service training for day-shift officers.
- 8) The Employer has not provided 40 hours of in-service training, per correctional officer, per year.

CONCLUSIONS OF LAW

- 1) The union has proven by a fair preponderance of the credible evidence that the Employer has failed to implement an arbitration award in violation of R.I.G.L. 28-7-13 (11) and 28-7-13 (10).

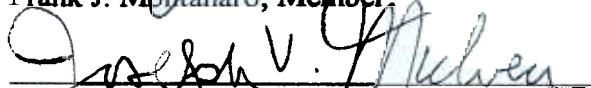
ORDER


- 1) The Employer is hereby directed to implement the arbitration award by fully implementing the In-Service Training Program which was adopted by the Employer, to the extent that 40 hours per year of training be provided to each correctional officer.

RHODE ISLAND STATE LABOR RELATIONS BOARD

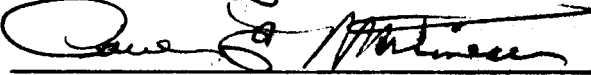

Gina A. Vigliotti, Chairperson


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Joseph V. Mulvey, Member


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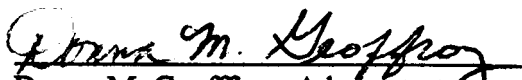

Ellen L. Jordan, Member


Paul E. Martineau, Member


Joseph Virgilio, Member

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: August 21, 1998

By: 
Donna M. Geoffroy, Administrator